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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re J.N., et al., Persons Coming Under the  
Juvenile Court Law.

B211907  
(Los Angeles County  
Super. Ct. No. BK 02142)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.R., et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County.

Anthony Trendacosta, Juvenile Court Referee. Reversed in part; affirmed in part.

Aida Aslanian, under appointment by the Court of Appeal, for Children and  
Appellants.

Melissa A. Chaitin, under appointment by the Court of Appeal, for  
Defendant and Appellant M. R.

Niccol Kording, under appointment by the Court of Appeal, for Defendant  
and Appellant J.N.

James M. Owens, Assistant County Counsel, and Byron G. Shibata, Senior  
Associate County Counsel, for Plaintiff and Respondent.

M. R., the mother of Jo. N. (son) and Ja. N. (daughter), and the children appeal from the portion of the disposition order denying mother reunification services pursuant to Welfare and Institutions Code section<sup>1</sup> 361.5, subdivisions (b)(10) and (b)(13). Mother and the children contend neither basis for denying the services was supported by substantial evidence. Father appeals from the portion of the disposition order requiring him to enroll in an inpatient substance abuse treatment program, arguing such a program was not reasonably tailored to remedy the problems which led to the children being detained. We reverse the portion of the order denying mother reunification services; in all other respects, the order is affirmed.

### **FACTUAL AND PROCEDURAL SYNOPSIS**

#### **I. Dependency History**

1. In 1990, mother's children M. and V. were removed from her care because she tested positive for PCP at M.'s birth. Father is not the father of M. and V. The court ordered reunification services for Mother, but she was incarcerated for the next six to seven years due to her drug use. The court terminated mother's parental rights, and mother never reunified with these children.

2 & 3. New section 300 petitions were filed for son in 1997 and daughter in November 1998 due to mother's drug use. The court-ordered reunification services for mother included drug rehabilitation, drug counseling and testing. In February and April 1999, the children were ordered home of parent – father. The court gave the Department of Children and Family Services (the Department) discretion to liberalize mother's monitored visits upon her providing verification she was complying with her case plan. On August 19, the court ordered unmonitored visits for mother.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

4. In January 2000, a new section 300 petition was filed on behalf of the children due to a violent altercation between mother and father.<sup>2</sup> The court terminated the prior home of parent orders, detained the children and placed them with their grandmother. The parents had unmonitored day visits, but could not visit simultaneously. The case plan for mother included participation in counseling for domestic abuse and random drug testing. Father was also ordered to attend the same counseling and testing as well as participating in AA/NA meetings. By the review hearing in July, the parents were allowed to visit together. The court gave the Department discretion to expand family visits to overnights. On December 12, 2000, the court ordered the children placed in home of parents, with family maintenance services. The parents received services through August 2001, and the court terminated jurisdiction on September 13, 2001.

5. In June 2006, another section 300 petition was filed because the parents were alleged to have allowed known gang members to reside in their home with drugs for sale and loaded firearms. The case concluded with a section 301 (voluntary services) contract, and the court did not take jurisdiction.

6. On July 28, 2008, the Department filed the current section 300 petition on behalf of the children. The petition indicated the Department might seek an order pursuant to section 361.5 that no reunification services be provided to the family.

## **II. Detention**

### **A. Report**

The current petition was triggered by a law enforcement referral on July 12, 2008, when father was caught shoplifting while son was in father's care. The social worker (CSW) visited the parents' home on July 14 and noted the home appeared to be messy and under construction, but contained plenty of food. Mother told the CSW that she and

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<sup>2</sup> It does not appear the court had terminated jurisdiction of the previous 1997 and 1998 petitions, but the record contains only a description of the prior petitions in reports.

the children slept in close proximity because father was prescribed Prozac<sup>3</sup> for chronic back pain, and she was concerned about his mood swings. Mother had allowed son to accompany father to return a gift to Sears because father's adult son also accompanied them. Mother stated she felt capable of protecting her children and knew not to leave them alone with father.

Mother denied any current drug use, stating she had not used for years and had been a recovering drug addict for the past 10 years. Although mother agreed to voluntarily test on July 15, she was unable to do so due to a mixup by the lab. When the CSW called mother later that day and told her to retest, mother could not go back to the lab because she had a medical appointment. Thereafter, after consulting with counsel, mother declined to voluntarily test.

Father admitted to being a recovering alcoholic, being verbally and physically abusive toward mother and to a previous arrest for domestic violence. Father blamed his behavior on the medications he was taking, especially Prozac, admitting the combination of his medications made him behave uncharacteristically. Father had stolen merchandise even though he had the money to pay for it; the arresting officer, who stated father had admitted to being under the influence of drugs, opined father's ability to judge right from wrong had been affected. The officer was concerned because father had been driving with son in the car.

Son told the CSW that father had behaved badly during their recent shopping trip because father had failed to take his medication. Son stated he had not seen either parent abuse drugs or alcohol, but several years earlier, he had witnessed father physically abuse mother. Neither parent physically abused son. Son confirmed his brother had accompanied him and father to Sears, but had left to return to San Diego prior to the time

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<sup>3</sup> The CSW requested to see the bottle of Prozac; neither father nor mother could provide proof he was taking Prozac. Father's doctor stated he had not prescribed Prozac for father.

son and father headed to the hardware department. Daughter also denied seeing either parent abuse drugs or alcohol and told the CSW she felt safe in her parents' home.

The CSW checked with father's doctors who had prescribed medication for his depression and anxiety; she was informed that in the past, father had mixed medications and alcohol, which was counter to medical recommendations because the mixture could produce aberrant behaviors. The doctor told the CSW that although father was experiencing bizarre behavior, as long as the children were in mother's care, they should be fine.

The CSW worked out a safety plan in which neither child was to be left alone with father, they would be taken for complete physical examinations, and both parents were to drug test on demand on July 15. After the parents had failed to attend a team decision making (TDM) meeting, the CSW detained the children because she believed mother could not adequately safeguard them because (1) mother had lifted the restraining order preventing father from residing in the home after the first incident of abuse; (2) father had subsequently assaulted mother again; and (3) father's recent shoplifting escapade. The CSW suspected both parents continued to abuse drugs based on the reported case history and because mother would not voluntarily test.

After the children were detained, they were reinterviewed. Both children confirmed they had seen father physically abuse mother in the past, and although their parents argued and fought, neither child felt frightened to remain in the home. The children had been given full medical examinations, and no signs of abuse had been found.

## **B. The Hearing**

The court found a prima facie case for detention. The court ordered reunification services, which for mother included individual counseling to address case issues and parenting. For father, services included individual counseling, parenting, and substance

abuse counseling with random drug testing. The court ordered father to comply with his doctor's treatment plan and take all prescribed medications. Visits were to be monitored.

### **III. Jurisdiction/Disposition**

#### **A. Report**

The CSW acknowledged that although at one time mother had extensive criminal involvement, the CLETS report showed no contact with law enforcement since December 2002. The CSW concluded, "she may have decided to eschew the criminal lifestyle." Mother told the CSW that she had belonged to a street gang, but at 19, she had abandoned that lifestyle and had her tattoos removed, which the CSW noted was painful and difficult.

Mother told the CSW she had "last used drugs, specifically PCP 'two years ago'" and did not drink. For the first time, the CSW stated the prior CSW had told him she suspected drug use by mother due to mother's "'erratic' behavior, her speech and general appearance." Although the prior CSW stated in her report that she suspected mother was using illegal drugs, she made no reference to mother's behavior.

Mother and father had been together for about 13 years. Father put mother through college. Mother was employed as an executive for business operations and worked as a volunteer with the LAPD including counseling for street gang members. Mother said father's behavior changed after he was fired from his long-time job in 2003 and his social drinking turned abusive. Father's depression, and the combination of drugs and alcohol, started causing wide-fluctuating mood swings. In June 2008, mother had called 9-1-1 on father when he threw water on her because he was yelling and she feared his mood because he was on Prozac. Father's doctor had since stopped prescribing that drug for him.

Father stated his life had become more difficult after he had injured his back while driving a bus in 1998. Father had tried various pain medications and took other

prescribed medications for various health conditions. Father began self medicating with alcohol in 2001 and became an alcoholic, and he had been mixing pills and alcohol since 2003. Father stopped taking Prozac and quit drinking after his 2007 arrest. The criminal restraining order for the 2007 case had been modified by the judge after mother told the judge they wanted to remain a family and work out their problems.

Both children told the CSW that their parents disciplined them by taking away toys, restricting privileges, making them face the wall or not allowing them to go outside; they did not fear father and wanted to be reunited with their parents as soon as possible. Son was not concerned about his family life; rather the neighborhood gangs concerned him.<sup>4</sup>

Foster mother reported the children were well mannered and polite and surmised “mother must have been doing something right.” The CSW noted “mother and father must have spent some time instilling proper values in their children.”

The parents visited weekly for four hours. The foster agency’s report noted the parents were as ““appropriate with one another as they are with their children,”” were ““very generous with their children,”” and ““care and love their children.””

The CSW explained that “[a]lthough there is no concrete proof of current illicit drug use by the mother,” she had a long history of drug use. The CSW’s suspicions were based on statements from the prior CSW and father’s probation officer and mother’s refusal to test voluntarily; he speculated that mother’s genetic history or possible drug exposure in her own family, predisposed her to a lifelong drug habit. The CSW opined that mother possibly suffered from mental and emotional problems and that father’s physical abuse could have contributed to those problems.

Although the CSW further speculated mother’s gang involvement and being raised by an abusive, alcoholic mother, might have limited mother’s understanding of proper social skills or skewed her view of what was normal and abnormal behavior, he

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<sup>4</sup> Although son had been diagnosed with autism, the CSW stated son appeared to be high functioning.

acknowledged that irrespective of her shortcomings, mother appeared to have the ability to function “at a high level” in given circumstances, as demonstrated by her work for the LAPD.

The CSW noted father was an admitted alcoholic who might also be addicted to prescription drugs and concluded that both parents had difficult childhoods which might have hindered their ability to be proper parents and stated “the best way to stop the [physical abuse] cycle is to enroll the children in individual counseling and not allow them to reunify with their parents until the parents can demonstrate . . . they no longer pose any risk to the children’s health and safety.” The CSW noted son had ““aggressive tendencies”” towards daughter.

### **B. September hearing**

The court indicated it was inclined to provide the parents with reunification services. The court ordered a supplemental report to address any changes in the recommendations and any update on the parents’ compliance. Mother’s attorney informed the court that father had moved out of the home and mother had enrolled in two parenting classes. The court ordered mother to have three visits per week and gave the Department discretion to liberalize her visits. The court suggested the Department consider holding another TDM meeting.

### **C. Interim Report**

Because the Department was recommending no reunification services, no further TDM meeting had been scheduled.

The report stated mother was not enrolled in services. When the CSW attempted to increase mother’s visits to include Mondays, mother stated she could not visit on Mondays because it conflicted with her parenting class, but she did not provide



verification. The report faulted mother for entrusting her 10-year-old daughter to keep money for her and for arriving late for some visits.

Father was attending counseling, but as his counselor was not a licensed clinician, he needed to be referred elsewhere for services. Father visited regularly, and there were no problems with the visits. Father's drug test from October 10 showed positive hits for various chemicals.

#### **IV. Adjudication/Disposition**

The court took judicial notice of the entire file. The sustained petition stated the children were at risk of harm because mother and father had a history of domestic violence and mother allowed father to reside in the home and have unlimited access to the children, father had a history of abuse of prescription medication, and father had emotional problems.

County counsel argued that although mother had showed a receipt for a parenting class, she had not talked to a CSW and it was unfortunate that the children (ages 10 and 11) had seen domestic violence in their home and were so complacent about it, they believed they would be safe with their parents. The children's counsel argued both parents should be offered services as her clients were comfortable with their parents and wanted to be returned to them soon. Mother's counsel argued that even though mother had a prior history of dependency, the children were well bonded with her and wanted to reunify with her and they all deserved a chance to reunify.

The court stated there was no legal basis for denying father services and ordered reunification services for him consisting of ordering him to attend an inpatient substance abuse program. The court further clarified the program was to include substance abuse counseling with random testing. The court summarily denied services for mother pursuant to section 361.5, subdivisions (b)(10) and (b)(13). The court ordered reasonable monitored visits for the parents, but they were to visit independently.

Mother, father and the children filed timely notices of appeal from the November 3 disposition order.

## **DISCUSSION**

### **I. Reunification Services for Mother**

Pursuant to section 361.5, subdivision (a), if children are removed from their parents' custody, the court is required to order reunification services unless it finds by clear and convincing evidence one of the exceptions set forth in subdivision (b). In the case at bar, the court denied services pursuant to section 361.5, subdivisions (b)(10) and (b)(13). In essence mother and the children contend it was error to deny her reunification services because there was no substantial evidence of her current drug use or that she had failed to address the problem leading to detention.

#### **A. Section 361.5, subdivision (b)(10)**

Section 361.5, subdivision (b)(10) provides:

That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from the parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

“[S]ection 361.5, subdivision (b)(10) has two prongs or requirements: (1) the parent previously failed to reunify with a sibling of the child; and (2) the parent failed to make reasonable efforts to correct the problem that led to the sibling being removed from

the parent's custody. [¶] In enacting section 361.5, subdivision (b)(10), 'the Legislature has made the decision that in some cases, the likelihood of reunification is so slim that scarce resources should not be expended on such cases.' 'Inherent in this subdivision appears to be a very real concern for the risk of recidivism by the parent despite reunification efforts.' [¶] A court reviews an order denying reunification services under section 361.5, subdivision (b) for substantial evidence." (Citations and italics omitted.) (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.)

Appellants concede the first prong was met, i.e., mother had failed to reunify with half siblings of the children. The problem which led to the half siblings being removed from mother was substance abuse. The Department argues that mother had not made reasonable efforts to treat that problem citing cases where the parents had made more reasonable efforts and received services (see e.g., *Cheryl P. v. Superior Court, supra*, 139 Cal.App.4th at pp. 97-98; *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1455-1457) or did not receive services as they made less than reasonable efforts (see e.g., *In re Harmony B.* (2003) 125 Cal.App.4th 831).

However, in the case at bar, the court made no express finding mother had not made a reasonable effort to treat the problem that caused the detention of the half siblings. Even if we imply such a finding, which we doubt the propriety of doing (see *In re Albert T.* (2006) 144 Cal.App.4th 207, 219), there is a lack of evidence mother still had a drug abuse problem. In order to criticize a parent for not treating a problem, it is first necessary to establish the parent still has a problem.

The 1997 and 1998 petitions were based on mother's drug use. The court-ordered services for mother included drug rehabilitation, drug counseling and testing. The court gave the Department discretion to liberalize mother's monitored visits upon her verifying she was complying with the case plan. The court subsequently ordered unmonitored visits, indicating mother had complied with the case plan. Although the 2000 petition was based on domestic abuse, the court ordered mother to participate in random drug testing. The children were placed in home of parents, with family maintenance services,

and the court terminated jurisdiction in September 2001, again indicating mother had complied with the case plan.

The current petition is based on domestic violence not substance abuse. There is no sustained allegation of substance abuse, and, at the detention hearing, the court only ordered that mother attend individual counseling and parenting, not substance abuse counseling or drug testing. The reports indicated the Department was concerned that both the parents and the children were minimizing the domestic violence in the home.

The Department reports contain statements of suspicions and speculations that mother might still be using. In *In re Basilio T.* (1992) 4 Cal.App.4th 155, the parents attacked the substance abuse component of their reunification plan on the basis of the absence of any evidence they had a substance abuse problem. Other than the social worker's observation the mother behaved somewhat out of the ordinary and was obsessed with discussing a fortune-making invention (for which there was an offer of proof the invention had a money-making potential), nothing in the record indicated either parent had a substance abuse problem. (*Id.*, at p. 172.) The Court of Appeal determined on that record, the mother's behavior could not support a conclusion she had a substance abuse problem. (*Id.*, at pp. 172-173.)

The CSW's suspicions of drug use by mother are based on her past history and her refusal to voluntarily test. The CSW stated the prior CSW had told him that she suspected drug use by mother due to mother's "'erratic' behavior, her speech and general appearance" and that father's probation officer believed mother was using illicit drugs again. The CSW did not state he had personally observed any erratic behavior by mother. The prior CSW did not include those suspicions in her own report. The reason father's probation officer suspected mother's drug use is not given. The CSW then speculates that mother is now mentally unstable and opines father's physical abuse could have contributed to causing mental and emotional problems for mother. Thus any inference that mother is abusing drugs because she might have mental or emotional problems or behaved erratically, an unestablished fact, is not substantial evidence.

Mother told the CSW she did not drink and had last used drugs “two years ago.” It is not clear if that was a one time use or if she had been using prior to that time. The children said they had not seen mother abusing drugs. In *Renee J. v. Superior Court*, *supra*, 96 Cal.App.4th at page 1464, the court noted, “the ‘reasonable effort to treat’ standard . . . is not synonymous with ‘cure.’ The mere fact that [a mother] had not entirely abolished her drug problem would not preclude the court from determining that she had made reasonable efforts to treat it.” The court reasoned: “If the evidence suggests that despite a parent’s substantial history of misconduct with prior children, there is a reasonable basis to conclude that the relationship with the current child could be saved, the courts should always attempt to do so. Courts must keep in mind that ‘[f]amily preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced.’ The failure of a parent to reunify with a prior child should never cause the court to reflexively deny that parent a meaningful chance to do so in a later case. To the contrary, the primary focus of the trial court must be to save troubled families, not merely to expedite the creation of what it might view as better ones.” (Citation and italics omitted.) (*Ibid.*)

As there is no clear and convincing evidence mother is currently using drugs, there is no substantial evidence supporting denial of reunification services under this subdivision. (*Cheryl P. v. Superior Court, supra*, 139 Cal.App.4th at p. 98.) Although Mother’s refusal to voluntarily test is not a basis for denying her reunification services, given mother’s history, the court could order her to drug test as part of reunification services.

## **B. Section 361.5, subdivision (b)(13)**

Section 361.5, subdivision (b)(13) provides:

That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

“This provision creates two bases for denying services: either (1) where the parent with a significant substance abuse problem has resisted treatment of that problem during the three years prior to the filing of the petition; or (2) where the parent has twice previously been provided and failed or refused to take advantage of available rehabilitation services while under the supervision of the juvenile court. The first provision does not require proof that the prior treatment occur during the three-year period; it requires proof that the resistance to such treatment occur.” (Italics deleted.) (*Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776, 779-780.)

In terms of the second basis for denying service: Prior to the filing of the current petition in July 2008, the court terminated jurisdiction over this family in September 2001. In addition, as discussed above, mother must have complied with the case plans on the prior petitions involving court orders for her to attend drug abuse counseling and drug testing. Thus, mother could not have failed or refused to comply with a program of drug treatment described in a case plan on at least two occasions.

Regarding the first basis, mother did have an extensive history of drug use. However, what the Department “is required to show is that a parent has previously undergone or enrolled in substance abuse rehabilitation. Then, during the three years prior to the petition being filed, the parent evidenced behavior that demonstrated resistance to that rehabilitation. Such proof may come in the form of dropping out of programs, but it may also come in the form of resumption of regular drug use after a period of sobriety.” (*Laura B. v. Superior Court, supra*, 68 Cal.App.4th at p. 780.)

There was no substantial evidence mother had resumed regular drug use after 2006. Hence, subdivision (b)(13) of section 361.5 does not support the denial of reunification services to mother.

## **II. Inpatient Treatment Program for Father**

When ordering reunification services, “The court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accord with this discretion. We cannot reverse the court’s determination in this regard absent a clear abuse of discretion. [¶] The reunification plan “must be appropriate for each family and be based on the unique facts relating to that family.” Section 362, subdivision (c) states in pertinent part: ‘The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the [child] is a person described by Section 300.’ The department must offer services designed to remedy the problems leading to the loss of custody.” (Citations omitted.) (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006-1007.)

Pursuant to *In re Neil D.* (2007) 155 Cal.App.4th 219, the court ordered father to participate in an inpatient treatment program. Father contends such a program was not reasonably tailored to remedy the problem which led to the dependency. Father suggests that because he was not addicted to illicit drugs or prescription medications, the appropriate solution would have been for the court to order a medical evaluation of his prescriptions and counseling to allow him to manage his prescription medications in a manner which would not cause side effects – something he claims the inpatient program would not do. The court clarified the program was to include substance abuse counseling and random testing.

Father proffers that his problem relates to prescription medications and there was no evidence of a long history of his mixing medications with alcohol or a long history of problems with his medication and therefore the remedy was not the same as for a long

term addict as the problem was his inability to manage the combination of medications. The record indicates father's problem may be more than just the combination medications he was taking and his problem was long standing.

One sustained basis of the dependency was father's abuse of prescription medications. Moreover, father had not enrolled in domestic violence counseling or attended anger management classes required as a condition of probation or court ordered DUI classes.

The current petition was filed in July 2008, after father was caught shoplifting while son was in father's care. The arresting officer stated father admitted to being under the influence of drugs. The officer opined that father's ability to judge right from wrong had been affected and expressed concern father had been driving with son in the car. When father talked to the CSW, he blamed his behavior on the medications he was taking, especially Prozac, and said the combination of medications made him behave uncharacteristically. At that time, the parents were unable to prove to the CSW that father had a prescription for Prozac, and father's doctor stated he had not prescribed Prozac for father.<sup>5</sup> Son said father had not taken his medications that day and the CSW found bottles of beer in the refrigerator when she visited the home suggesting father might still have been abusing alcohol or mixing alcohol and medications. Moreover, father's behavior on that day was not uncharacteristic, but part of a pattern of similar behavior. Mother had expressed concern "about father's personality and stated that he can be calm and in a matter of seconds became full of rage" and told father's doctor that father's behavior was worsening.

In 1998, father was in an accident while driving a bus. Father admitted to the CSW that in 1998 he began "self-medicating" with alcohol and became an alcoholic. In 2001, father began mixing drinking and medications. In 2003, father began taking pain medication. Father reported he began hallucinating that mother was being unfaithful and

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<sup>5</sup> Father did have a prescription bottle for Prozac in September 2008, raising the question as to whether he was getting prescriptions from different doctors.



that he “‘snapped’ meaning losing his mind.” Father admitted to drinking excessively in 2007. Father said his pain medications made it difficult for him to hold down a job, leading to financial problems, depression, and a suicide attempt in 2002. Father blamed his violent behavior, mental and emotional problems, and excessive drinking on his prescription pain medication.

If the combination of medications was causing problems, father had over five years to have those medications evaluated and adjusted. Thus, father had not managed his medications and the court could infer an evaluation was not enough to control father’s abuse of his prescription medications. Father claims he quit drinking after his 2007 arrest for battering mother, but the CSW found seven bottles of beer in the refrigerator when she first visited in 2008. Father tested positive in October 2008; it is unknown if the positives were for properly prescribed medications. Father complains the Department is picking and choosing among his statements; but that is what the court would do in making its credibility determination. The court did not have to accept father’s explanation of what his problem was.

In *Neil D.*, the court ordered the mother to reside in a drug program, and the mother argued the court should have considered the less restrictive alternative of an inpatient program. (*In re Neil D.*, *supra*, 155 Cal.App.4th at p. 225.) The Court of Appeal rejected her argument noting the court had an obligation to determine the best way to tackle the mother’s addiction. (*Ibid.*) At the time of the disposition hearing, father did not request the court to order a medical evaluation rather than an inpatient program. Even if he had, the court could reasonably infer father was addicted to prescription medications and/or was still mixing alcohol and medications such that an evaluation would not solve the problem leading to the dependency and that father needed a more controlled environment given his long history of drug-related problems.

Father attempts to distinguish *Neil D.* on the basis the mother there was addicted to illicit drugs where his problem was mismanagement of prescription medications. Addiction is addiction; a person can be addicted to prescription medications. Father

further argues *Neil D.* is punitive in application because if he does not enter an inpatient substance abuse program, the Department will seek to terminate his reunification services. In *Neil D.*, the mother similarly argued it was unfair to ask her to accept involuntary incarceration or risk losing her children. (*In re Neil D.*, *supra*, 155 Cal.App.4th at p. 226.) The court rejected her argument, noting she “faces the same consequences as any other parent who fails to comply with his or her case plan. Her assertion that it is unjust to compel her to address the very problem that caused her children to become dependents rings hollow.” (*Ibid.*; see also *In re Nolan W.* (2009) 45 Cal.4th 1217, 1233 [“To the extent reunification services intrude upon a parent’s liberty, the Legislature has determined these intrusions are justified by the need to protect children and enable their safe return to competent parental care whenever possible.”].)

Father has not shown the court abused its discretion in ordering him to attend an inpatient substance abuse program. Father expressed concern the court could order inpatient drug treatment for any side effect of properly prescribed medication giving the court blanket discretion to order such treatment whenever a parent had a reaction to medication regardless of the cause. However, there must be a nexus between reaction to the medication and a risk to a child as well as the need for the treatment for the court to order such treatment.

### **DISPOSITION**

The portion of the disposition order denying reunification services to mother is reversed. The matter is remanded to the juvenile court to conduct a new hearing to determine the appropriate reunification services to be provided to mother. In all other respects, the order is affirmed.

**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**JACKSON, J.**